

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

LEON STAMBLER,

Plaintiff,

V.

CIVIL ACTION NO. 2:08cv462

MERRILL LYNCH & CO., INC.;
MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED; THE CHARLES
SCHWAB CORPORATION; CHARLES
SCHWAB & CO, INC.; CHARLES
SCHWAB BANK; E*TRADE FINANCIAL
CORPORATION; E*TRADE BANK;
FIDELITY BROKERAGE SERVICES, LLC;
NATIONAL FINANCIAL SERVICES, LLC;
FMR LLC; MORGAN STANLEY;
MORGAN STANLEY & CO.
INCORPORATED; JACK HENRY &
ASSOCIATES, INC.; METAVANTE
TECHNOLOGIES, INC.; METAVANTE
CORPORATION; PAYPAL, INC.;
AMERICAN EXPRESS COMPANY;
AMERICAN BANK OF COMMERCE;
BB&T CORPORATION; BRANCH
BANKING AND TRUST COMPANY; THE
COLONIAL BANCGROUP, INC.;
COLONIAL BANK; FIRST NATIONAL
BANK GROUP, INC.; FIRST NATIONAL
BANK; HSBC NORTH AMERICA
HOLDINGS INC.; HSBC USA INC.; HSBC
BANK USA, NATIONAL ASSOCIATION;
HSBC NATIONAL BANK USA;
LEGACYTEXAS GROUP, INC.;
LEGACYTEXAS BANK; THE PNC
FINANCIAL SERVICES GROUP, INC.;
PNC BANK, NATIONAL ASSOCIATION;
PNC BANK, DELAWARE; PROSPERITY
BANCSHARES, INC.; PROSPERITY
BANK; STERLING BANCSHARES, INC.;
STERLING BANK; SUNTRUST BANKS,
INC.; SUNTRUST BANK; TEXAS
CAPITAL BANCSHARES, INC.; TEXAS
CAPITAL BANK. NATIONAL

JURY TRIAL DEMANDED

ASSOCIATION; U.S. BANCORP; U.S.	§
BANK NATIONAL ASSOCIATION;	§
ZIONS BANCORPORATION; ZIONS	§
FIRST NATIONAL BANK; and AMEGY	§
BANK NATIONAL ASSOCIATION	§
	§
Defendants.	§
	§

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff LEON STAMBLER files this Original Complaint against the above-named Defendants, alleging as follows:

I. THE PARTIES

1. Plaintiff LEON STAMBLER (“Stambler”) is an individual residing in Parkland, Florida.

2. Defendant MERRILL LYNCH & CO., INC. is a Delaware corporation with its principal place of business in New York, New York. This Defendant may be served with process through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

3. Defendant MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED is a Delaware corporation with its principal place of business in New York, New York. This Defendant may be served with process through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

4. Defendant THE CHARLES SCHWAB CORPORATION is a Delaware corporation with its principal place of business in San Francisco, California. This Defendant may be served with process through its registered agent, The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801.

5. Defendant CHARLES SCHWAB & CO., INC. is a California corporation with its principal place of business in San Francisco, California. This Defendant may be served with process through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

6. Defendant CHARLES SCHWAB BANK is a banking subsidiary of The Charles Schwab Corporation with its principal place of business in Reno, Nevada. This Defendant may be served with process through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

7. Defendant E*TRADE FINANCIAL CORPORATION is a Delaware corporation with its principal place of business in New York, New York. This Defendant may be served with process through its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808.

8. Defendant E*TRADE BANK is a banking subsidiary of E*Trade Financial Corporation with its principal place of business in Arlington, Virginia. This Defendant may be served with process through its President, Robert V. Burton, 671 North Glebe Road, 16th Floor, Arlington, Virginia 22203.

9. Defendant FIDELITY BROKERAGE SERVICES, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. This Defendant may be served with process through its registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

10. Defendant NATIONAL FINANCIAL SERVICES, LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. This Defendant may be served with process through its registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

11. Defendant FMR LLC is a Delaware limited liability company with its principal place of business in Boston, Massachusetts. This Defendant may be served with process through its registered agent, Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

12. Defendant MORGAN STANLEY is a Delaware corporation with its principal place of business in New York, New York. This Defendant may be served with process through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

13. Defendant MORGAN STANLEY & CO. INCORPORATED is a Delaware corporation with its principal place of business in New York, New York. This Defendant may be served with process through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

14. Defendant JACK HENRY & ASSOCIATES, INC. is a Delaware corporation with its principal place of business in Monett, Missouri. This Defendant may be served with process through its registered agent, Corporation Service Company dba CSC - Lawyers Incorporating Service Company, 701 Brazos, Suite 1050, Austin, Texas 78701.

15. Defendant METAVANTE TECHNOLOGIES, INC. is a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin. This Defendant may be served with process through its registered agent, CT Corporation System, 8040 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.

16. Defendant METAVANTE CORPORATION is a Wisconsin corporation with its principal place of business in Milwaukee, Wisconsin. This Defendant may be served with process through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

17. Defendant PAYPAL, INC. is a Delaware corporation with its principal place of business in San Jose, California. This Defendant may be served with process through its registered agent, National Registered Agents, Inc., 160 Greentree Drive, Suite 101, Dover, Delaware 19904.

18. Defendant AMERICAN EXPRESS COMPANY is a New York corporation with its principal place of business in New York, New York. This Defendant may be served with process through its registered agent, CT Corporation System, 111 Eighth Avenue, New York, New York 10011.

19. Defendant AMERICAN BANK OF COMMERCE is a Texas State Financial Institution with its principal place of business in Wolfforth, Texas. This Defendant may be served with process through its registered agent, David Harmon, West 82nd Street and US Highway 62/82, Wolfforth, Texas 79382.

20. Defendant BB&T CORPORATION is a North Carolina corporation with its principal place of business in Winston-Salem, North Carolina. This Defendant may be served with process through its registered agent, CT Corporation System, 225 Hillsborough Street, Raleigh, North Carolina 27603.

21. Defendant BRANCH BANKING AND TRUST COMPANY is a banking subsidiary of BB&T Corporation with its principal place of business in Winston-Salem, North Carolina. This Defendant may be served with process through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

22. Defendant THE COLONIAL BANCGROUP, INC. is a Delaware corporation with its principal place of business in Montgomery, Alabama. This Defendant may be served with process through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

23. Defendant COLONIAL BANK is a banking subsidiary of The Colonial Bancgroup, Inc. with its principal place of business in Montgomery, Alabama. This Defendant may be served with process through its registered agent, Carrie Ellis McCollum, 100 Colonial Bank Boulevard, Montgomery, Alabama 36117.

24. Defendant FIRST NATIONAL BANK GROUP, INC. is a Texas corporation with its principal place of business in Edinburg, Texas. This Defendant may be served with process through its registered agent, Saul Ortega, 100 West Cano, Edinburg, Texas 78539.

25. Defendant FIRST NATIONAL BANK is a banking subsidiary of First National Bank Group, Inc. with its principal place of business in Edinburg, Texas. This Defendant may be served with process through its registered agent, Robert Gandy, III, 100 West Cano, Edinburg, Texas 78539.

26. Defendant HSBC NORTH AMERICA HOLDINGS INC. is a Delaware corporation with its principal place of business in Mettawa, Illinois. This Defendant may be served with process through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

27. Defendant HSBC USA INC. is a Delaware corporation with its principal place of business in New York, New York. This Defendant may be served with process through its registered agent, The Prentice-Hall Corporation System, Inc., 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

28. Defendant HSBC BANK USA, NATIONAL ASSOCIATION is a banking subsidiary of HSBC USA, Inc. with its principal place of business in Wilmington, Delaware. This Defendant may be served with process through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

29. Defendant HSBC NATIONAL BANK USA is a banking subsidiary of HSBC USA, Inc. with its principal place of business in Bethesda, Maryland. This Defendant may be served with process through its registered agent and/or officer at 7637 Old Georgetown Road, Bethesda, Maryland 20814.

30. Defendant LEGACYTEXAS GROUP, INC. is a Texas corporation with its principal place of business in Plano, Texas. This Defendant may be served with process through its registered agent, George A. Fisk, 5000 Legacy Drive, Plano, Texas 75024.

31. Defendant LEGACYTEXAS BANK is a banking subsidiary of LegacyTexas Group, Inc. with its principal place of business in Plano, Texas. This Defendant may be served with process through its registered agent, Donald R. St. Clair, 5000 Legacy Drive, Plano, Texas 75024.

32. Defendant THE PNC FINANCIAL SERVICES GROUP, INC. is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania. This Defendant may be served with process through its President, Joseph Guyaux, 1 PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222.

33. Defendant PNC BANK, NATIONAL ASSOCIATION is a banking subsidiary of The PNC Financial Services Group with its principal place of business in Pittsburgh, Pennsylvania. This Defendant may be served with process through its registered agent, Carol A. Sarnowski, 1 PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222.

34. Defendant PNC BANK, DELAWARE is a banking subsidiary of The PNC Financial Services Group with its principal place of business in Wilmington, Delaware. This Defendant may be served with process through its President and Chief Executive Officer, Connie Bond Stuart, 222 Delaware Avenue, Wilmington, Delaware 19801.

35. Defendant PROSPERITY BANCSHARES, INC. is a Texas corporation with its principal place of business in Houston, Texas. This Defendant may be served with process through its registered agent, David Zalman, 4295 San Felipe, Houston, Texas 77027.

36. Defendant PROSPERITY BANK is a banking subsidiary of Prosperity Bancshares, Inc. with its principal place of business in El Campo, Texas. This Defendant may be served with process through its registered agent, David Zalman, 1301 North Mechanic, El Campo, Texas 77437.

37. Defendant STERLING BANCSHARES, INC. is a Texas corporation with its principal place of business in Houston, Texas. This Defendant may be served with process through its registered agent, James W. Goolsby, Jr., 2550 North Loop West, Suite 600, Houston, Texas 77092.

38. Defendant STERLING BANK is a banking subsidiary of Sterling Bancshares, Inc. with its principal place of business in Houston, Texas. This Defendant may be served with process through its registered agent, Janet B. Groue, 2550 North Loop West, Suite 600, Houston, Texas 77092.

39. Defendant SUNTRUST BANKS, INC. is a Georgia corporation with its principal place of business in Atlanta, Georgia. This Defendant may be served with process through its registered agent, Raymond D. Fortin, 303 Peachtree Street, Suite 3600, Atlanta, Georgia 30308.

40. Defendant SUNTRUST BANK is a banking subsidiary of SunTrust Banks, Inc. with its principal place of business in Atlanta, Georgia. This Defendant may be served with process through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

41. Defendant TEXAS CAPITAL BANCSHARES, INC. is a Delaware corporation with its principal place of business in Dallas, Texas. This Defendant may be served with process

through its registered agent, James White, 6060 North Central Expressway, Suite 800, Dallas, Texas 75206.

42. Defendant TEXAS CAPITAL BANK, NATIONAL ASSOCIATION is a banking subsidiary of Texas Capital Bancshares, Inc. with its principal place of business in Dallas, Texas. This Defendant may be served with process through its registered agent, James White, 6060 North Central Expressway, Suite 800, Dallas, Texas 75206.

43. Defendant U.S. BANCORP is a Delaware Corporation with its principal place of business in Minneapolis, Minnesota. This Defendant may be served with process through its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

44. Defendant U.S. BANK NATIONAL ASSOCIATION is a banking subsidiary of U.S. Bancorp with its principal place of business in Cincinnati, Ohio. This Defendant may be served with process through its registered agent, CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

45. Defendant ZIONS BANCORPORATION is a Utah corporation with its principal place of business in Salt Lake City, Utah. This Defendant may be served with process through its registered agent, Corporation Service Company, 2180 South 1300 East, Suite 650, Salt Lake City, Utah 84106.

46. Defendant ZIONS FIRST NATIONAL BANK is a banking subsidiary of Zions Bancorporation with its principal place of business in Salt Lake City, Utah. This Defendant may be served with process through its President and Chief Executive Officer, A. Scott Anderson, One South Main Street, Salt Lake City, Utah 84111.

47. Defendant AMEGY BANK NATIONAL ASSOCIATION is a financial institution with its principal place of business in Houston, Texas. This Defendant may be served

with process through its registered agent, Joe Ann Caton, 4400 Post Oak Parkway, Houston, Texas 77027.

II. JURISDICTION AND VENUE

48. This is an action for infringement of two United States patents arising under 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction of this action under Title 28 U.S.C. §1331 and §1338(a).

49. The Court has general and specific personal jurisdiction over each Defendant, and venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b). Each Defendant has substantial contacts with the forum as a result of conducting substantial business within the State of Texas and within this District. Upon information and belief, each Defendant regularly solicits business in the State of Texas and in this District, and derives substantial revenue from products and/or services provided to individuals residing in the State of Texas and in this District. In addition, each Defendant conducts business relating to secure online banking, including online bill pay, with and for customers residing in this District. Specifically, each Defendant provides these services directly to consumers in this District through its own interactive website(s) (e.g. www.colonialbank.com) and/or indirectly to consumers in this District through the provision of products and services to financial institutions who serve consumers in this District. Through the provisions of these products and/or services, each Defendant has committed and continues to commit acts of patent infringement in the State of Texas and in this District.

III. PATENT INFRINGEMENT

50. On August 11, 1998, United States Patent No. 5,793,302 (“the ‘302 patent”) was duly and legally issued for a “Method for Securing Information Relevant to a Transaction.” A true and correct copy of the ‘302 patent is attached hereto as Exhibit “A.” On October 26, 1999, United States Patent No. 5,974,148 (“the ‘148 patent”) was duly and legally issued for a

“Method for Securing Information Relevant to a Transaction.” A true and correct copy of the ‘148 patent is attached hereto as Exhibit “B.” (The ‘302 and ‘148 patents are collectively referred to herein as “the patents-in-suit”). Stambler is the inventor and owner of all rights, title, and interest in and to the patents-in-suit and possesses all rights of recovery under them.

51. Defendants have infringed and continue to infringe, directly, contributorily, and/or through the inducement of others, the claimed methods of the patents-in-suit by provision of their respective secure online banking products and/or services, including but not limited to online bill pay and secure funds transfer products and/or services.

52. Stambler has been damaged as a result of Defendants’ infringing conduct. Defendants are, thus, liable to Stambler in an amount that adequately compensates him for their infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

53. Each Defendant’s infringements of Stambler’s rights under the patents-in-suit will continue to damage Stambler, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

IV. JURY DEMAND

Stambler hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

V. PRAYER FOR RELIEF

Stambler requests that the Court find in his favor and against Defendants, and that the Court grant Stambler the following relief:

- a. Judgment that one or more claims of United States Patent Nos. 5,793,302 and 5,974,148 have been infringed, either literally and/or under the doctrine of equivalents, by one or more Defendants and/or by others to whose infringement Defendants have contributed and/or by others whose infringement has been induced by Defendants;

- b. Judgment that Defendants account for and pay to Stambler all damages to and costs incurred by Stambler because of Defendants' infringing activities and other conduct complained of herein;
- c. That Defendants' infringements be found to be willful from the time that Defendants became aware of the infringing nature of their respective products and services, which is the time of filing of Plaintiff's Original Complaint at the latest, and that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- d. A grant of a permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendants from further acts of infringement;
- e. That Stambler be granted pre-judgment and post-judgment interest on the damages caused by Defendants' infringing activities and other conduct complained of herein;
- f. That this Court declare this an exceptional case and award Stambler his reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and
- g. That Stambler be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: December 4, 2008.

Respectfully submitted,

/s/ Brent N. Bumgardner
Texas State Bar No. 00795272
Attorney-in-Charge
Edward R. Nelson, III
Texas State Bar No. 00797142
Barry J. Bumgardner
Texas State Bar No. 00793424
Christie B. Lindsey
Texas State Bar No. 24041918
Steven W. Hartsell
Texas State Bar No. 24040199
NELSON BUMGARDNER CASTO, P.C.
5601 Bridge Street, Suite 300

Fort Worth, Texas 76112
(817) 377-9111
(817) 377-3485 (fax)
bbumgardner@nbclaw.net
enelson@nbclaw.net
barry@nbclaw.net
clindsey@nbclaw.net
shartsell@nbclaw.net

Eric M. Albritton
Texas State Bar No. 00790215
ALBRITTON LAW FIRM
P.O. Box 2649
Longview, TX 75606
(903) 757-8449
(903) 758-7397 (fax)
ema@emafirm.com

T. John Ward, Jr.
Texas State Bar No. 00794818
WARD & SMITH LAW FIRM
111 W. Tyler Street
Longview, Texas 75601
(903) 757-6400
(903) 757-2323 (fax)
jw@jwfirm.com

Ronald A. Dubner
Texas State Bar No. 06149000
4965 Preston Park, Suite 560
Plano, Texas 75093
(972) 964-6500
(972) 964-6533 (fax)
rondub@gte.com

**ATTORNEYS FOR PLAINTIFF
LEON STAMBLER**